It will be seen that the Warden shall issue a summons to the party against whose conduct such complaint is made. This, in my opinion, can mean only one of the parties registered as lessee or sub-lessee and nobody else. The Warden shall also notify and call all persons whose interests may, in his opinion, be affected by such enquiry. But there is nothing in the section which empowers the Warden to add any other person as a party to the enquiry. In my opinion, the section gives power to the Warden to exercise his discretion and call any other person whom he thinks may be affected by the enquiry and record the evidence of such other person. Such other person is not made a party to this enquiry. This Motion is brought under O.16 r.12 and, in my opinion, the Rules of the Supreme Court, 1957 regulate the procedure in respect of this Motion and not the provisions of section 99 of the Mining Enactment.

Mr. Tang, for the company, referred to an order dated 2nd November, 1961 in Raub High Court Civil Suit No. 7 of 1961. It was a consent order and the parties to the suit would appear to be the partners of the company. The complainant was not a party to the Civil Suit No. 7 of 1961. I fail to see how an order in C.S. 7 of 1961 could be binding on the complainant. The consent order declared that Say Hor Kee held the sub-lease as trustee for the company but this part of the consent order was never registered under the Mining Enactment. The second part of the consent order was that Say Hor Kee was restrained "from dealing with the said land and from interfering with the mining of the said land by the said Lee Shang Mining Company". I fail to see how any person or body of persons other than the registered sub-lessee, Say Hor Kee, can mine the land in contravention of the Mining Enactment. The Lee Shang Mining Company has not been registered as a company or as a corporation. It has only been registered under the Registration of Businesses Ordinance — section 6 of the Mining Enactment refers.

The subject matter of this Motion is a sub-lease registered in accordance with the provisions of the Mining Enactment. The complainant is the registered lessee and the respondent, Say Hor Kee, is the registered sub-lessee in his personal capacity and not in trust for any body of persons. I hold the Court has no jurisdiction to add any person or company who has no legal title to the lease or sub-lease as an additional respondent. It is open to the company to take any legal action against Say Hor Kee it may deem fit and proper.

The Motion is dismissed with costs.

Motion dismissed.

Solicitors: *T. C. Tang & Co.*; *Bannon & Bailey.*

PUBLIC PROSECUTOR v. BEHN MEYER & CO. LTD.

[A. Cr. J. (Rose C.J.) May 2, 1962]

[Singapore — Magistrate's Appeal No. 1 of 1962]

Sale of Food and Drugs Ordinance (Cap. 148), ss.9 and 11(1)(g) — Selling of cod liver oil capsules — No reference embodying test within meaning of s.9(2) — Whether prosecution failed to comply with s.9.

Food and Drugs Regulation, 1957, reg.3(1)(i).

The respondents were charged with selling cod liver oil capsules under section 11(1)(g) of the Food and Drugs Ordinance. The learned Magistrate acquitted the respondent on the ground that section 9 of the said Ordinance had not been complied with. On appeal by the Public Prosecutor,

Held: as no evidence was adduced at the trial to show that there was no prescribed test or, indeed, that another test other than that prescribed by the British Pharmacopoeia or British Pharmaceutical Codex was used one cannot quarrel with the decision of the learned Magistrate that the prosecution had failed to comply with section 9.

MAGISTRATE'S APPEAL.

Sachi Saurajen (Deputy Public Prosecutor) for the appellant.

David Chelliah for the respondents.

Cur. Adv. Vult.

Rose C.J.: The respondents were charged with selling cod liver oil capsules which were below standard, contra section 11(1)(g) of the Sale of Food and Drugs Ordinance.

The learned Magistrate acquitted the respondents on the ground that section 9 of the Ordinance had not been complied with.

Section 9 reads as follows:—

"9. (1) The certificate of the analyst shall be in the prescribed form.

(2) Where any method of analysis has been prescribed, any analyst either for the prosecution or defence shall, in his certificate of analysis, declare that he has followed the prescribed method in his analysis."

Sub-paragraph (i) of paragraph (1) of regulation 3 of the Food and Drugs Regulations, 1957 reads as follows:—

"(i) Drugs.

Drugs, the names or descriptions of which are included in the current edition with amendments or supplements (if any), of the 'British Pharmacopoeia' or 'British Pharmaceutical Codex' shall conform to the descriptions and tests respectively prescribed therein."

No evidence was adduced at the trial to show that there was no prescribed test or, indeed, that another test other than that prescribed by the British Pharmacopoeia or British Pharmaceutical Codex was used.

References to cod liver oil are contained in pages 179, 946, 956 and 958 of the British Pharmacopoeia (1958) edition.

Mr. Saurajen contends that those references embody no prescribed test within the meaning of section 9(2) of the Ordinance, for the reason, it would seem, that there is no reference to capsules as such. And it is suggested that the prescribed test for cod liver oil contained in a capsule would

be different from that relating to cod liver oil in any other type of container.

Mr. Chelliah contends that a prescribed test is sufficiently set out in those pages of the Pharmacopoeia and can be derived from a study of those pages.

I must confess that, at the least, I am in doubt as to whether the distinction between the tests applicable to cod liver oil in capsules and to cod liver oil in other forms of container is a valid one. In any event no evidence on the point has been submitted. That being so, on the evidence available before me on the record, I am unable to say that there is no prescribed method within the meaning of section 9(2).

The analyst having failed to state that he has followed the prescribed method or that there was no prescribed method, it seems to me that one cannot quarrel with the decision of the learned Magistrate that the prosecution had failed to comply with section 9; this not seeming to be a matter in which the prosecution can avail themselves of a presumption.

The appeal must therefore be dismissed and the acquittal affirmed.

Appeal dismissed.

Solicitors: *Drew & Napier.*

Re LOW KUAN MENG

[R. Cr. J. (Ong J.) May 5, 1962]

[K.L. — Criminal Revision No. 6 of 1962]

Criminal Law and Procedure — Preliminary inquiry — Order of acquittal — Jurisdiction of Magistrate — Criminal Procedure Code (Cap. 6) Ch. XVII.

The accused was provisionally charged with attempted murder under section 307 of the Penal Code. A preliminary inquiry was directed to be held before a Magistrate, and in due course, when it was to begin, the prosecution officer informed the Magistrate that, on instructions of the Deputy Public Prosecutor the charge against the accused was withdrawn. Thereupon the Magistrate made an order that "the accused is acquitted and discharged."

Held: the order of acquittal was manifestly wrong. A preliminary inquiry is not a trial, and at its conclusion there is no delivery of judgment. In making an order of acquittal the Magistrate was pronouncing a judgment, and he was purporting to do so even in a matter which he had clearly no jurisdiction to try.

Order of Magistrate varied, and order purporting to acquit the accused struck out.

Cases referred to:—

(1) *Public Prosecutor* v. *Mary Shim* [1961] M.L.J. 314.

CRIMINAL REVISION.

Ong J.: This matter came up for revision upon a petition by the Public Prosecutor that the Magistrate, before whom a preliminary inquiry was to have been held under Chapter XVII of the Criminal Procedure Code, had no jurisdiction to make an order of acquittal.

The accused was charged provisionally with attempted murder, an offence under section 307 of the Penal Code. A preliminary enquiry was directed to be held before a Magistrate, and in due course, when it was due to begin, on January 2, 1962, the prosecuting officer informed the Magistrate that, on instructions of the Deputy Public Prosecutor the charge against the accused was withdrawn. Thereupon the learned Magistrate made an order that "the accused is acquitted and discharged".

The order of acquittal was manifestly wrong. A preliminary inquiry is not a trial, and at its conclusion there is no delivery of judgment. In making an order of acquittal the learned Magistrate was pronouncing a judgment, and he was purporting to do so even in a matter which he had clearly no jurisdiction to try. The provisions of section 140 are quite clear. "Discharge" is not synonymous with "acquittal". The recent judgment of Adams J. in *Public Prosecutor* v. *Mary Shim* (1) makes further comment by me superfluous.

The order of the learned Magistrate is accordingly varied, and the order purporting to acquit the accused is struck out.

Order accordingly.

NATHA SINGH v. SYED ABDUL RAHMAN & ANOR.

[A.C.J. (Hepworth J.) May 7, 1962]

[Penang — Civil Appeal No. 1 of 1962]

Money and Moneylending — Promissory note in the English language — Not attested in accordance with s.27, Moneylenders Ordinance, 1951.

Contract — No plea of illegality — Whether court can intervene.

A promissory note written in the English language and not attested by of the persons specified in section 27 of the Moneylenders Ordinance, 1951 (as is required if the borrower is a person not understanding the written language on the note) is legal on the face of it. It would only be illegal if the borrowers (respondents) did not understand the English language. As there was nothing to indicate that they (respondents) did not understand the English language, it could not be said that the contract *ex-facie* showed illegality. As the respondents had not filed a defence and were absent at the trial, there was no question of an admission being made or evidence being given from which the promissory note's illegality clearly appeared.

Unless a defendant raises the defence of the illegality of a contract on the pleadings then he cannot rely upon it and, except where the contract is on the face of it illegal or its illegality is brought to the notice of the court, even the court has no right to intervene.

Cases referred to:—

(1) *Lipton* v. *Powell* [1921] 2 K.B. 51, 58.

(2) *North Western Salt Co.* v. *Electrolytic Alkali Co.* [1914] A.C. 461.

CIVIL APPEAL.

Jag-Jit Singh for the appellant.

Respondents absent.